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IN THE

Supreme Court of the United States

OCTOBER TERM—1948

LAURIE J. CARPENTER,

Appellant,

—v.—

ROHM AND HAAS CO. INC.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF OF PLAINTIFF IN PERSON

LAURIE J. CARPENTER,
Plaintiff in Person,
458 W. 35th St.,
New York 1, N. Y.

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PETITION FOR CERTIORARI

To the Honorables, The Chief Justice of the United States and Associate Justices of the Supreme Court of the United States.

Your petitioner, Laurie J. Carpenter, respectfully submits his petition for a writ of Certiorari to review the decree of the United States Court of Appeals for the Third Circuit in the above entitled case.

The Court of Appeals for the Third Circuit has affirmed an order dismissing the complaint in the District Court of the United States for the District of Delaware.

The jurisdiction of the Court is where a Court of Appeals has decided an important question of local law in a way probably in conflict with applicable local decisions.

The only question presented is the time within which an action for damages can be maintained.

The reason relied on for the writ is 5137 of the Delaware Code. It is the only statute in Delaware on which an action could be maintained for fraud and concealment, except a waiver. It is a special right given to an individual class and supersedes the ordinary right. Article 1 Section 1 of the Constitution of Delaware says, if technical words are given a peculiar meaning in law such meaning shall be applied and therefore the ordinary right need not be taken literally to exclude the special rights.

LAURIE J. CARPENTER,
Plaintiff in Person,
458 W. 35th St.,
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IN THE

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LAURIE J. CARPENTER,

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BRIEF IN SUPPORT OF PETITION

Jurisdiction of the Court

The jurisdiction of the Court is where a Court of Appeals has decided an important question of local law in a way probably in conflict with applicable local decisions.

Statement of the Case

The case was called in the District Court of the United States for the District of Delaware for decision of questions of law.

The Defendant asked to put in an amended answer, which was granted on oral consent of Plaintiff.

When the order was put in, the words, "or otherwise plead", were inserted.

The amended answer added a defense of limitations, which had not been mentioned on the motion to amend, though an intention to move for summary judgment had been mentioned.

At the argument of the motion for summary judgment Plaintiff asked to extend the time to maintain an action for concealment by withholding the chemical name of a poison solvent from the labels of an adhesive.

The order of dismissal on the opinion of the District Court was served before presentation for signing and Plaintiff wrote in, quoting the Atlantic Reporter as authority upon which an extension of time could be granted in fraud.

Upon the reply that the Court was informed and consideration after opinion was unusual, Plaintiff did not appear at the signing of the order but took steps to appeal to the Court of Appeals for the Third Circuit.

On the Appeal, the other defense, that the relief could not be granted was also stated but no opinion is given thereon and it would seem that it is not a defense in this case.

The label as described in the affidavit of Mr. David A. Rothrock was printed in red ink on white paper and read as follows:

WARNING—POISON

Avoid prolonged contact with skin. This material contains a volatile solvent which may prove toxic if vapor is inhaled for extended periods. Use only with adequate ventilation. Symptoms: Drowsiness, dizziness, nausea. Treatment: wrap patient in blanket, provide plenty of fresh air.

It is the contention of the plaintiff that the warning is inadequate and actually induces persons to tolerate the poison expecting symptoms as a warning. Symptoms do not appear or, if they do, not until permanent damage has occurred as the nature of the poison is not asphyxiation but is embolism.

The material as used by others was not considered hazardous.

In the examination of the claim it is brought out that the Defendant was insured and the Continental Casualty Co. maintains an office in New York.

ARGUMENT

Summary

5133 of the Delaware Code allowing actions for personal injury within one year is not exclusively the law of Delaware. Exception, limitations must be specifically pleaded and 5137 allows an action within 3 years after removal of disability of coverture. Coverture is concealment in the technical meaning allowed by the Delaware constitution, and is a special right given to an individual class.

ARGUMENT

5133 of the Delaware Code reads, "No action for the recovery of damages upon a claim for alleged personal injuries shall be brought after the expiration of one year from the date upon which it is claimed that such alleged injuries were sustained."

It is not exclusively the law of Delaware. The statute must be specifically pleaded (25 Del. 274) as revised for publication in 1947 by Richards, Layton and Finger of the Wilmington Bar.

The Atlantic Reporter 29a (2d) page 802 par. 16 reads, "Delaware limitation statute permits suits to be brought within 3 years from discovery of fraud".

In 5137 of the Delaware Code, if a party entitled to an action apprehended within one of the foregoing, be under

a disability of infancy, insanity or coverture he may bring an action within 3 years after removal of the disability.

5137 of the Delaware Code is the only statute in Delaware upon which an action can be brought after fraud and concealment. Coverture has a meaning of concealment and would apply as the technical meaning in law under Article 1 section 1 of the Delaware Constitution.

It is a special right given to an individual class and supersedes the ordinary right given in 5133.

A demand that the defendant answer as to what was the chemical name of the poison solvent would accordingly be timely within 3 years after exposure, where there was a question as to what was causing damage of personal injury.

The affidavit of Mr. David Rothrock, that Acryloid B7 was the only one labeled poison and a publication that acryloid B7 was produced in solvent ethylene dichloride is admission that the poison was ethylene dichloride, where it is not denied under Federal rule 8d, so the demand for an answer as to what was the chemical name of the poison solvent is sufficiently satisfied, but recovery of damages by such an omission is not satisfied.

Defense of limitations in the amendment was prejudiced under section 767 of the United States Code as a right remaining in another jurisdiction could be lost by delay.

Statement of No Assignment of Errors

There was no assignment of errors in the District Court as the rule to give notice of appeal does not state that it is required.

Respectfully,

LAURIE J. CARPENTER,
Plaintiff in Person,
458 W. 35th St.,
New York 1, N. Y.